IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3167 OF 2005

The Bombay Diocesan Trust Association P.Ltd. ...Applicant
vs.
Francis Prabhakar Kasbe & Anr. ...Respondents

Mr.Jayendra Khairnar i/b Mr.anurag Jain for the Applicant
Mr.S.R.Shinde, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : NOVEMBER 30,2006.

P.C.:

1. Heard Advocate for the Applicant. The first Respondent has been acquitted for the offence punishable under section 630 of the Companies Act, 1956. The case of the Applicant was that the first Respondent was its employee and he was occupying the property in dispute in the capacity as employee of the Applicant and that after termination of the employment, the possession of the property was wrongfully withheld by the first Respondent.

2. After having heard the learned Advocate for the Applicant and after perusing the impugned Judgment and order, I find that no case is made out for grant of leave. The defence of the first Respondent was that he was in possession of the property as a tenant thereof. The learned Trial Judge has observed that the Applicant did not produce any material to show that the first Respondent was in its employment. Only material produced by the Applicant was alleged letter of termination dated 13th April 1998. However, the P.W.No.1 admitted in his cross examination that the Applicant was not

in possession of any documentary evidence to show that the said letter was served to the first Respondent. Apart from these facts, the learned Trial Judge has referred to a letter at Exh.44 which was admittedly issued by one of the Directors of the Applicant in which it was stated that the first Respondent was residing in the property in dispute as a tenant. The Trial Court also referred to the notice at Exh-26 which was issued by the Applicant to the first Respondent calling upon the first Respondent to vacate the premises in dispute. The Trial Court noted that there was no reference in the notice at Exh.26 to the alleged employment of the first Respondent and that the property was possessed by the first Respondent in his capacity as an employee.

3. Thus, the learned Trial Judge passed an order of acquittal by holding that essential ingredients of section 630 of the said Act of 1956 were not established.

4. The view taken by the learned Trial Judge is a possible view which could have been taken on the basis of evidence on record. No case is made out for grant of leave. Application is rejected.

5. It is made clear that the observations which are made in this order are for limited purpose of considering the prayer for grant of leave and no adjudication has been made as regards the alleged right claimed by the first Respondent in

respect of the property in dispute.

JUDGE